

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
EXAERIS, INC., and)	Case No. 07-10887 (KG)
INYX USA, LTD.,¹)	Case No. 07-10888 (KG)
)	
Debtors.)	
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)	
DR. JACK KACHKAR,)	
)	
Appellant)	Civil Action No. 07-621 (GMS)
v.)	Civil Action No. 08-270 (UNA)
)	
WESTERNBANK PUERTO RICO,)	
STEPHEN S. GRAY, Chapter 11)	
Trustee of INYX USA, LTD.)	
)	
Appellees.)	
)	

**PRELIMINARY OBJECTION OF WESTERNBANK PUERTO RICO TO
APPELLANT’S MOTION FOR AN ORDER (I) CONSOLIDATING
APPEALS AND (II) EXCUSING PARTIES FROM THE MEDIATION
REQUIREMENTS OF THIS COURT’S JULY 23, 2004 STANDING ORDER**

Westernbank Puerto Rico (“Westernbank”), by and through its undersigned counsel, submits this preliminary objection to the motion (the “Motion”) submitted by Appellant Jack Kachkar (“Appellant”) for an order (i) consolidating the above-captioned appeals, and (ii) excusing the parties from the obligation to mediate pursuant to this Court’s Standing Order In Re: Procedures Governing Mediation of

¹ The Exaeris, Inc. and Inyx USA, Ltd. bankruptcy cases were jointly administered at the outset of their cases at Bankruptcy Case No. 07-10887. However, on December 6, 2007, the Bankruptcy Court vacated the order for joint administration.

Appeals from the Bankruptcy Court for the District of Delaware, dated July 23, 2004 (the “Standing Order”), and respectfully represents as follows:

1. On September 17, 2007, Appellant filed an appeal (the “First Appeal”) from the September 7, 2007 order of the Bankruptcy Court titled “Final Order as to Debtor Inyx USA, Ltd. (Case No. 07-10888) (I) Authorizing the Use of Cash Collateral pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection To Westernbank Puerto Rico as the Prepetition Lender, (III) Authorizing Postpetition Financing, (IV) Granting Liens and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 363 and 364, and (V) Modifying Automatic Stay Pursuant to 11 U.S.C. § 362.”

2. The First Appeal was docketed in this Court on October 11, 2007 [07-621 D.I. 5]. Pursuant to the Standing Order, the parties participated in mediation but were unable to reach a resolution. *See* Letter to Clerk of Court from Vincent J. Poppiti regarding completion of mediation, dated February 5, 2008 [07-621 D.I. 7].

3. Pursuant to the Stipulated Briefing Schedule [07-621 D.I. 9], the parties have fully briefed the First Appeal. Westernbank and Stephen S. Gray, chapter 11 trustee for Inyx USA, Ltd., as appellees, have filed applications for oral argument. [07-621 D.I. 17 & 18, respectively].

4. On April 14, 2008, Appellant filed an appeal (the “Second Appeal”) from the April 3, 2008 order of the Bankruptcy Court titled “Final Order (I) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Westernbank Puerto Rico as the Prepetition Lender, (III) Authorizing Further Postpetition Financing, (IV) Granting Liens and Superpriority

Administrative Expense Status Pursuant to 11 U.S.C. §§ 363 and 364, and (V) Modifying Automatic Stay Pursuant to 11 U.S.C. § 362.”

5. The Second Appeal was docketed in this Court on May 7, 2008 [08-270, D.I. 5]. Mediation has not yet taken place, as required by the Standing Order, and a judge has not been assigned to the Second Appeal.

6. On May 8, 2008, Appellant filed the instant Motion seeking to consolidate the First and Second Appeals, and to be excused from the obligation to mediate the Second Appeal in accordance with the Standing Order [08-270, D.I. 6, 07-621 D.I. 19].

Objection

7. Westernbank files this preliminary objection out of an abundance of caution, in the event the Court views the Motion as a motion for a procedural order pursuant to Rule 8011(b) of the Federal Rules of Bankruptcy Procedure. The Motion requires a substantive inquiry regarding the facts surrounding each appeal, and does not seek a procedural order. It should not be granted without a full and comprehensive hearing.

8. Westernbank objects to the Motion, and intends to file a supplemental objection with the Court on a timely basis. The First and Second Appeals concern separate orders, entered over six months apart from one another based upon

distinct factual records.

WHEREFORE Westernbank respectfully requests that the Court deny the Motion, and grant such other and further relief as may be just.

Dated: May 9, 2008
Wilmington, Delaware

/s/ Steven K Kortanek
Steven K. Kortanek, Esq. (Del. Bar No. 2078)
John H. Strock, Esq. (Del. Bar No. 4965)
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
222 Delaware Avenue, Suite 1501
Wilmington, Delaware 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330

– and –

Harvey R. Miller
Shai Y. Waisman
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Westernbank Puerto Rico

CERTIFICATE OF SERVICE

I, Heidi E. Sasso, certify that I am not less than 18 years of age, and that service of the foregoing document was made on May 9, 2008 upon:

**Sheldon K. Rennie, Esq.
Anthony Sacullo, Esq
Fox Rothschild LLP
919 N. Market Street, Ste. 1300
Wilmington, DE 19801**

**Michael Menkowitz, Esq.
Fox Rothschild O'Brien & Frankel
2000 Market Street, 10th Floor
Philadelphia, PA 19103**

**Bruce Grohsgal, Esq.
Pachulski Stang Ziehl & Jones
919 Market Street, Ste. 1700
Wilmington, DE 19801**

**Christopher Ward, Esq.
Klehr Harrison Harvey Branzburg & Ellers LLP
919 Market Street, Ste. 1000
Wilmington, DE 19801**

**Richard L. Schepacarter
United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19899-0035**

**Ballard Spahr Andrews & Ingersoll, LLP
Attn.: Tobey M. Daluz, Esquire
919 N. Market Street, 12th Floor
Wilmington, Delaware 19801**

Under penalty of perjury, I declare that the foregoing is true and correct.

____5/9/2008_____
Date

_____/s/ Heidi E. Sasso_____
Heidi E. Sasso

